



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/719,183	11/21/2003	Craig D. Ellis	8266-1187	3235
25267	7590	10/12/2005	EXAMINER	
BOSE MCKINNEY & EVANS LLP 135 N PENNSYLVANIA ST SUITE 2700 INDIANAPOLIS, IN 46204			HEWITT, JAMES M	
			ART UNIT	PAPER NUMBER
			3679	

DATE MAILED: 10/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/719,183

Applicant(s)

ELLIS ET AL.

Examiner

James M. Hewitt

Art Unit

3679

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 July 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 14-16 and 18-27 is/are rejected.
- 7) ☒ Claim(s) 2-13 and 17 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

Claims 22-27 are objected to because of the following informalities:

In claim 22 line 8, the second period should be deleted. Note that in order to be in compliance with 37 CFR 1.121, double brackets should be used for deletion of the period.

Appropriate correction is required.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claim 16 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 33 of U.S. Patent No. 6,735,799. Although the conflicting claims are not identical, they are not patentably distinct from each other because the differences therebetween are not substantive.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 16, 18, 20-22 and 26-27 rejected under 35 U.S.C. 102(b) as being anticipated by Volk (US 5,267,364).

Volk discloses a fluid supply apparatus for supplying fluid to a therapy device on a bed having a barrier, the apparatus comprising a housing (box attached to footboard); a fluid supply located within the housing; first and second hangers (hooks) coupled to the housing and configured to couple the housing to the barrier (footboard) in first and second orientations. Note that the first orientation may be as shown in Figure 1, and the second may be with one hanger attached to the footboard and the other hanger not attached to the footboard (e.g. laterally outward of the footboard). The housing includes an elongated slot (see Figure 1) defining a storage receptacle, the slot formed adjacent a bottom end of the housing below the fluid supply.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

Art Unit: 3679

the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 14-15, 19 and 22-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bell et al (US 5,664,270) in view of Bartlett et al (US 5,611,096), and further in view of Volk (US 5,267,364).

Bell et al discloses a patient interface system having several detachable components linked electronically to bed assembly 11. The components include transducers 30a-g, external operative devices 40a-b, printer 26, communication system 51, and external processor storage 27. The bed includes a CPU 36, sensors 34a-c, numerous connection ports (transducer, printer, monitor, communication). A touch screen 16 is provided and is explained in detail in column 12 lines 10-35. Bedside medical devices can either be connected to the device by cable or wireless connections, and is capable of controlling various medical device related to the bed or patient, including patient turn actuators, scales, inflation devices, etc. Bell et al fails to teach that a fluid supply is located within the housing 80. Bartlett teaches a patient interface system for a bed including a fluid supply located within a housing. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Bell et al with a fluid supply integral with his housing, as opposed to attachable thereto, in order to avoid having to connect and detach and reconnect and detach the fluid supply when required. Bell et al and Bartlett et al fail to teach that their device includes first and second hangers configured to couple the housing in first and second orientations respectively. Volk discloses a fluid supply apparatus for supplying fluid to a therapy device on a bed having a barrier, the apparatus comprising a housing (box

Art Unit: 3679

attached to footboard); a fluid supply located within the housing; first and second hangers (hooks) coupled to the housing and configured to couple the housing to the barrier (footboard) in first and second orientations. Note that the first orientation may be as shown in Figure 1, and the second may be with one hanger attached to the footboard and the other hanger not attached to the footboard (e.g. laterally outward of the footboard). The housing includes an elongated slot (see Figure 1) defining a storage receptacle, the slot formed adjacent a bottom end of the housing below the fluid supply. It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the Bell et al and Bartlett et al device with hangers as taught by Volk in order to vary the position of the housing along the end of the therapy device.

Allowable Subject Matter

Claims 2-13 and 17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Note that the allowability of claim 17 is also contingent upon overcoming the above-noted objection to claim 16 (see ***Claim Objections*** above).

Response to Arguments

Applicant's arguments filed 7/5/05 have been fully considered but they are not persuasive.

With respect to claim 1, Applicant argues "Volk does not disclose a combination including 'a first hanger coupled to the housing, the first hanger being configured to couple the housing to the barrier in a first orientation; and a second hanger coupled to the housing, the second hanger being configured to couple the housing to the barrier in a second orientation' as required by claim 1. There is no disclosure in Volk enabling one skilled in the art to practice Volk in the manner suggested in the Office Action. Volk only discloses a single orientation (Fig.1). There is no disclosure in Volk to support the Examiner's assertion that 'the second may be with one hanger attached to the footboard and the other hanger not attached to the footboard.' There is no disclosure to support that the hangers could be to allow proper clearance for only one hanger to be placed over the footboard. Additionally, even if the device were hung in this manner the weight could cause the box 22 to angle upwards, which could pull conduits 20a-c from the air supply 22." The Examiner disagrees. Claim 1 requires the first hanger to be *configured to couple the housing to the barrier in a first orientation* and the second hanger to be *configured to couple the housing to the barrier in a second orientation*. In the 3/31/05 office action, an example for each orientation is provided. The second orientation could be one in which the housing and hangers are at different axial positions along the footboard, or one in which the housing is positioned along the side of the footboard, wherein the hooks could be permanently affixed via a given fastening means to the footboard. Volk does not disclose several orientations in which the housing can be coupled via the hooks to the footboard. Yet, it is clear that the hooks are inherently capable of and configured to couple the housing in a variety of orientations. The 35

USC 102 rejection of claims 1, 16, 18 and 20-21 as being anticipated by Volk is thus maintained.

With respect to claim 22, Applicant argues "Volk does not disclose a combination including 'means for coupling the housing to the barrier in a first orientation; and means for coupling the housing to the barrier in a second orientation different from the first orientation'" as required by claim 22. For at least the reasons stated above for claim 1, claim 22 is believed to be in condition for allowance with respect to Volk and with respect Bell in view of Bartlett in further view of Volk." The Examiner disagrees. Claim 22 requires means for coupling the housing to the barrier in a first orientation and means for coupling the housing to the barrier in a second orientation. In Volk, one hook constitutes the claimed means for coupling the housing to the barrier in a first orientation and the other hook constitutes the claimed means for coupling the housing to the barrier in a second orientation. The first orientation is shown in Figure 1. The one hook (along with the other hook) permits coupling of the housing to the footboard in the first orientation. The second orientation could be one in which the housing and hangers are at different axial positions along the footboard, or one in which the housing is positioned along the side of the footboard, wherein the hooks could be permanently affixed via a given fastening means to the footboard. The other hook (along with the one hook) permits coupling of the housing in a second orientation. Volk does not disclose several orientations in which the housing can be coupled via the hooks to the footboard. Yet, it is clear that the hooks are inherently capable of and configured to

couple the housing in a variety of orientations. The 35 USC 102 rejection of claims 22-25 as being anticipated by Volk is thus maintained.

To note, contrary to applicant's remarks, the terminal disclaimer that was said to be filed to obviate the double patenting rejection has not been received.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

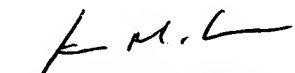
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James M Hewitt whose telephone number is 703-305-0552.

Art Unit: 3679

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel Stodola can be reached on 703-308-2686. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


JAMES M. HEWITT
PRIMARY EXAMINER